

DETENTION AND REFOULEMENT OF ASYLUM SEEKERS IN HUNGARY

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A week after the ten new member states joined the European Union, on 7th of May the general director of the Office for Immigration and Nationality arranged a press conference. As a part of the Union, she said, we can expect a major influx of asylum-seekers. We have to enlarge the capacity of the reception centres, our office needs more support from the budget.

Nobody is a fortune-teller, and it can happen that the prediction of the general director will come true. However, statistical data provided by the general-director's office do not support her forecast. In 2003, there were 2401 persons who submitted an asylum application in Hungary: this was the lowest figure in the last fifteen years since asylum seekers arrive in Hungary. The decrease is really radical as in the previous year, 2002, there were 6412 applications – not to speak about the peak in 1999 with 11412 newcomers. This tendency does not seem to change, as in the first four months of the present year there were 528 new applications. That means if nothing unexpected happens, the final figure for the present year will not exceed that of last year. I would not call the accession to the European Union an unexpected event.

These facts and figures raise two different questions. First, how to explain the decrease of the asylum seekers? Second, why the top official of all questions that concern aliens as refugees, migrants, tourists, host workers and investors, felt necessary to frighten the press as the most festive moments of the Great Unification were just over?

MIGRANTS OR ASYLUM SEEKERS

2348 of the six and half thousand asylum-seekers in 2002 came from Afghanistan, 1994 from Iraq – that is, 68 percent of all applicant arrived from these two territories. These figures went down to 390 and to 396 in 2003. Most Afghans – 4311 – arrived in 2001 as the tyranny of the Taliban was at its peak. In 1999, 4783 of the more than eleven thousand asylum-seekers came from Yugoslavia. Together with the 2338 Afghans they made up 62 percent of all asylum-seekers. The figures clearly demonstrate that most people always flee from the regions of actual crises: in 1998-99 from Yugoslavia, mainly from Kosovo, in 2001-2002 from Afghanistan and Iraq.

Nowadays there are practically no new asylum-seekers coming either from Serbia or from Kosovo. The influx from Afghanistan also ended with the end of Taliban rule in 2002. Nobody, not even President Bush could say the crisis in Iraq is now over; still there is a strong decrease of Iraqi asylum-seekers not only in Hungary but in all countries of Europe. All these figures also contradict the common myth that post cold war flight is a mainly economic migration. The motives why people flee are always mixed. I myself know very well that a major part of the two hundred thousand people who left Hungary in 1956 after the Hungarian uprising was overthrown by the Soviet troops were not personally threatened by the returning rulers. But even those who have learned how to coexist with the dictatorship could have been fed up with their own techniques of survival, therefore they decided to leave. Nobody will challenge that escaping Communist rule during the Cold War was a form of political flight. Nobody should doubt that leaving the countries of Milosevic or of Saddam Hussein was a flight motivated basically by the grounds listed in the Geneva Convention.

One can not be either so naïve or so optimistic to believe the decrease in the number of asylum-seekers can be explained just by the changes in some countries of origin. Such a hypothesis will be immediately disproved by two facts. Firstly, the rate of decrease in entire Europe is smaller than in Hungary; secondly, the two countries in a similar geographical situation as Hungary, the Czech Republic and Slovakia registered a significant increase of newcomers. On a European average, the decrease of Iraqi asylum-seekers was balanced by a strong increase of applicants from the Russian

Federation that means from Chechnya. This raises another question: why do Chechens keep away from Hungary while thousands of them show up in Poland and in the Czech Republic?

I can give two reasons for the strong decrease of new applicants in Hungary, but they certainly do not give a full explanation. The first reason is the detention policy of the Hungarian authorities, while the second is the use or misuse of the readmission agreements with the neighbouring countries.

THE LONG HISTORY OF DETENTION

The detention of aliens has a long history in Hungary, which is partly coloured by changes in government. The first law on aliens from 1993 (that by far preceded the law on asylum from 1997) ordered that illegal and indigent aliens should be placed in community shelters and the authorities have to decide on their freedom of movement. The executive order of the same law issued by the (stone-hard conservative) minister of interior said the community shelter can be left only with a special permit of the police force that runs the shelter. The Hungarian Helsinki Committee, which in 1995 in cooperation with two other human rights groups was first licensed to visit and monitor the big community shelter, pointed out this contradiction between law and executive order. The new, liberal minister of interior annulled this part of the executive order and dissolved the community shelter. Since that, instead of one big community shelter close to Budapest, there have been eight smaller ones established close to the border, run by the border guard. In August 1998, based on the joint order of the national commander of the border guard and the national police chief, all community shelters were turned into closed institutions. Inmates were only allowed to leave the facilities in extraordinary cases, which basically meant: never. This command that evidently lacked any legal basis was not simply the consequence of the conservative coalition that had earlier taken over the government. Also, it happened under pressure from the Austrian minister of interior who protested against the massive influx of illegal migrants from Hungary to Austria, and threatened the Hungarian government that Austria will enforce Schengen passport control mechanisms on Hungarian citizens.

It took a year to create a legal basis for the closing down of the community shelters in the framework of the law against organised crime in 1999, but the gates of the shelters were not opened in this year either. The full deprivation of freedom of movement covered also asylum-seekers, as the law on asylum passed under the previous socialist-liberal government gave a possibility that asylum-seekers – instead of being transferred to an open reception centre – could be kept in the border guard's community shelters. Border guards officers were dreaming about four billion forints (that time about 16 million USD) budgetary support to build giant detention centres for thousands of asylum-seekers. This dream was not realised partly because of lack of money, but also because UNHCR and also the European Commission sharply criticized the general practice of detaining asylum-seekers.

By the end of 1998, there were already 1500 people in detention, mainly Albanians from Kosovo who had been returned to Hungary by the Austrian gendarmerie, without having access to the asylum procedure. These measures were unlawful even in Austria, as the Austrian law on asylum provides that all claims must be examined at least in an accelerated procedure. Mainly the German language press reported then rather frequently about the inhuman conditions in the overcrowded community shelters, where sometimes even new born babies were also held in detention. Finally, NATO brought freedom for the detained Kosovars. As the bombardment started it occurred to somebody in the Ministry of Interior that it was bizarre to keep Kosovo Albanians in detention while our allies were fighting for their liberty. From one day to the other, it turned out that these dangerous illegal migrants are actually nice asylum-seekers and they were released.

The new alien law passed in the framework of the accession legislation in 2001 made judicial review of detention mandatory. The Socialists (in opposition at that time), using the expert opinion of the Hungarian Helsinki Committee, put pressure on the government that needed also opposition votes for the law the adoption of which required a qualified majority in Parliament. Under this pressure, the maximum time of the detention went down from 18 to 12 months. According to the law, aliens can be detained if there was already an expulsion order, in the interest of carrying out expulsion, if there is evidence that the alien will try to hinder his or her expulsion. Detention must be terminated if it becomes evident the expulsion can not be executed.

This is a shame of the judges that they – with very few honourable exceptions – interpreted the law according to their own prejudices. They decided that if an alien, asylum-seekers included, had entered

the county illegally, this serves as an proof that he/she will hinder the expulsion. At an informal gathering of county judges who had to pass the second instance decision on detention, the judges decided that a judge is not in the position to decide if the expulsion cannot be executed; as this is the competence of the alien policing authorities. That means the judges willingly subordinated themselves to the administrative authorities.

Despite this self-humiliating behaviour of the judiciary, the number of those who were in detention gradually went down. While there are a total of 600 places in the lock-ups of border guard, the number of detainees on 1 September 2003 was 221, and 96 on April 1st of this year. Those who came from countries covered by the non-refoulement principle (like Iraq or Afghanistan) can not be expelled, which means they cannot be detained. A major part of those who are now in detention typically had not applied for asylum and in a relatively short period of time can be sent back to their home countries like Moldovan and Chinese citizens. One can hope that the number of detained asylum-seekers will further decrease as the most recent amendment of the alien law guarantees mandatory legal representation for aliens in the detention procedure. Still, as it is unpredictable who will come in an open reception centre and who will be detained, the threat of one year long detention, the accidental and unpredictable character of detention has been enough to discourage migrants and smugglers to consider Hungary as a *terre d'asile* and to choose Slovakia or Poland as a route to the West instead of Hungary.

DENIAL OF ACCESS TO PROCEDURE

As part of the preparation for EU-accession, border guard forces were re-deployed from the former iron curtain border to Austria to the borders of the former brotherly Socialist countries as Romania or the former Soviet Union, that is, Ukraine. With EU support, the Hungarian border guard is now equipped with dozens of heat-sensitive cameras, and people living close to the border are regularly rewarded for reporting on illegal border crossings or on groups of aliens discovered in the border region. Today it is much easier to cross the border illegally from Hungary to Austria than from Ukraine to Hungary.

In January of this year, three members of the Hungarian Helsinki Committee together with two representatives of UNHCR, escorted by two high-ranking border guard officers paid a three-day long visit along the Southern and Eastern borders of Hungary. One of our most striking experiences was that servicemen of the border guard are not familiar with the expression "asylum-seeker". Instead, they speak just about "unlawful events at the border" and about people who "had crossed the border illegally". That means that in the framework of readmission agreements they try to send back third country nationals to the neighbouring country from which they crossed the border.

Readmission practices are significantly different vis à vis the three neighbouring countries of Hungary. Serbia-Montenegro denies readmitting third country nationals. In this respect, the Serbian state carries on the policy of the Milosevic regimes that denied to take back ethnic Albanians, Hungarians, Roma but also Serbs unless they had a valid passport. By the way, they saved the life and freedom of thousands whom the Hungarian authorities had tried to expel and deport to Serbia in 1998 and early 1999 before the bombardment started. That means the 334 Afghans, 228 Iraqis and 83 Iranians who came to Hungary from the South all had access to the asylum procedure. The Romanian authorities readmit third country nationals if the Hungarian party can produce clear evidence that these persons had crossed the border from Romania. This way, there were not more than 93 third country nationals readmitted to Romania, among them some Afghans and Iranians. Exact figures broken down according to citizenship were not available.

In 2003, the Ukrainian authorities accepted the readmission of 161 third country nationals while they rejected the request of the Hungarian party in 41 cases. Among those who were forcibly returned to Ukraine there were 13 Afghans, 32 Iraqis and 20 Kurds from Turkey. This procedure violates the Geneva Convention as well the Hungarian law on asylum and the law on the protection of the state border. According to both Hungarian laws, if an alien declares his intention to seek protection before an alien policing authority (such as the border guard or the police), these authorities have to forward this declaration immediately to the asylum authority.¹ The border guard goes around this legal provision saying they did not apply for asylum. It is rather unlikely that Afghans or Iraqis would had

¹ Section 30 of Act CXXXIX of 1997 on asylum

travelled thousands of kilometres and paid thousands of dollars if they had not wanted to reach a safe haven and did not want to apply for asylum.

As a matter of fact, we do have much harder evidences than pure logic. Upon request of the Hungarian Helsinki Committee, the border guard handed over to us anonymous protocols of interviews with “illegal migrants”. Although the foreigners were mainly asked about the transit routes from their home countries, about the vehicles of the smugglers or – in case of Iraqi citizens – about the whereabouts of chemical weapons or weapons of mass destruction, many of them said they were persecuted in their country, that they had come because of political reasons, because their family had been killed in the war or because they were looking for a safe country in Europe. These statements are recorded but they are not heard. A border guard officer has to have a selective ear, said an officer sarcastically.

The threat of detention, the strengthened protection of the borders on the South and the East and the partly “successful” readmission policy has helped to reduce the number of asylum-seekers. At the end of 2003, there were 3246 places altogether in reception centres, community shelters and in detention facilities. The number of people staying in all of the facilities does not reach one thousand. Based on the most recent legislation, the asylum procedure became much shorter, as instead of three levels of appeal now there is just one appeal instance. I have to repeat the starting question: why does the Office for Immigration and Nationality frighten the public with a vision of a mass influx of aliens?

THE END OF BEING A TRANSIT COUNTRY?

Hungary, as all Central European countries since the political changes 14 years ago, has remained a transit country. In the four years between 1999 and 2002, 57 percent of all asylum procedures had been terminated

This means the applicants disappeared before the interview on the merits of the claim, not more than 30 days after arrival. Others left later, after their claim had been rejected, or after they realised that subsidiary protection status is worth nothing. Even two-thirds of the 950 refugees who have been recognised since 1999 went further West. While left and right governments changed each other, the entire asylum policy of the state organs has not changed at all. It was built on the hope and the belief that asylum seekers will and can leave, therefore it is not necessary to support integration, to provide proper language education, to help in finding a job.

EU-membership and the Dublin II regulation might end this comfortable policy of doing nothing. There are already rumours that the Austrians are ready to send back two thousand people who had recently arrived in Austria through Hungary. Even if this will not happen, asylum-seekers and also refugees realise it is senseless to go to the West illegally. The rate of terminated procedures was only 37 percent last year, and it went down to 18 percent in the first four months of the present year. The price must to be paid for the lack of integration program. There are increasing numbers of recognised refugees in the reception centres, although the one-year legal deadline after recognition for leaving the centre has passed. But they do not speak Hungarian, do not have a job, can not pay for private accommodation – how could they be expected to leave?

The Immigration Office is terrified of the asylum-seekers returned from the West and afraid of installing the fingerprint devices that are necessary to implement Eurodac. Until now, doing nothing was enough for survival. Will it also be enough within the Union?